

GAMALIEL E. SMITH.

[To accompany H. R. bill No. 37.]

FEBRUARY 29, 1840.

Mr. RUSSELL, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to whom was referred the petition of Gamaliel E. Smith, make the following report :

This claim has been several times presented for the consideration of Congress, and at the 2d session of the 25th Congress was referred to the Committee of Claims, when a detailed report was made thereon (see Rep. No. 1,065), which concluded with a resolution referring the subject to the Solicitor of the Treasury, with directions to ascertain the value of the labor performed by the said Gamaliel E. Smith "under a contract made with the United States to build a light-house and dwelling-house on Mount Desert rock, in the State of Maine; and the value of the materials furnished by him for said buildings and used by him for that purpose, or being prepared by him were used by his successor, under a contract for constructing said buildings.

"In making an estimate of the value of the labor performed, or of the materials used as aforesaid, regard is to be had to the price fixed by the parties in the contract for constructing said buildings, and the price for the labor done, and the materials delivered, to be in proportion to the labor and materials for completing the entire buildings."

This resolution, after having been adopted by the House, was referred to the Solicitor of the Treasury, and by him a commission to the district attorney in the State of Maine was sent, with a view to a full investigation, and to obtain the facts in the case. Pursuant to these directions given to the district attorney, Mr. Smith was notified of the time and place of taking the testimony, where he appeared, and a full investigation was had, and the proceedings returned to the Solicitor of the Treasury; who thereupon proceeded to liquidate the claim according to the terms of the reference. His report is herewith submitted, and concludes with the following statement :

"In estimating the value of the wood-work and masonry actually done, in proportion to that necessary to complete the whole undertaking, we have not, in the evidence produced by Mr. Smith on his own account, nor in that taken by the district attorney, any specific and accurate statement to go by. Indeed, as a gross sum was stipulated to be paid, and the labor of the same persons appears to have been employed on both parts of it, such a statement could not, probably, be made with much accuracy.

"From the testimony of Mr. Berry, who completed the entire building and furnished all the wood-work, we ascertain that this portion under his contract actually cost him \$500. It appears from the books of the Fifth Auditor, that he received, altogether, the aggregate sum of \$2,770.

"Estimating the entire value of the wood-work in Mr. Smith's contract at the same rate in relation to the aggregate sum of \$1,500, which he has to receive, we have the sum of \$273 as the proportion of that part of his contract; and if we deduct from that the value of the sashes, inside doors, and other articles, which were removed from the rock, it may leave the sum of \$200 as the probable value of the wood-work actually completed and put upon the building at the time Mr. Smith's contract was forfeited.

"In regard to the specific value of the masonry or stone-work, the evidence is equally defective, and from the same cause. In the testimony of Reuben McKenney, one of the witnesses, however, we have a general estimate, 'that the building, including the materials, in the situation it was when Mr. Berry commenced the work on the rock, might be worth \$300 in constructing the new light-house.' As it is stated in the same testimony that the wood-work had to be taken to pieces in pulling down the walls, and was consequently worth little, this amount of \$300 may be regarded as about the fair value of the stone, so far as it was capable of being used by Mr. Smith's successor.

"The result of this inquiry therefore is, that the value of the labor performed and materials furnished by Mr. Smith under his contract, and not restored to him, may be stated with reasonable certainty, according to the general tenor of the evidence, at \$500, of which the proportion used by his successor, and actually applied in the construction of the present light-house, was about \$300.

"The improbability of ascertaining the points submitted in the resolution with more precision and accuracy, will be seen from the nature of the testimony; but as that is transmitted in full with the present report, ample opportunity will be given of testing the correctness of the view here taken, and of making a change in the estimate, should it be regarded as incorrect."

From this, it appears the Solicitor of the Treasury is of opinion "that the value of the labor performed, and materials furnished by Mr. Smith under his contract, and not restored to him, may be stated with reasonable certainty, according to the general tenor of the evidence, at five hundred dollars."

The committee have examined the testimony and the report, and have not discovered any error, either in detail or result; and as no appropriation has been made for the payment of the claim, the committee herewith report a bill for the petitioner's relief.